



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 31, 2022

BY EMAIL

Leo Shalit, Esq.
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Greenvale, NY 11548

Re: *United States v. Vitaly Borker*, 22 Cr. 273 (JSR)

Dear Counsel:

The Government writes, consistent with Judge Rakoff's oral instruction at the August 16, 2022 status conference in the above-captioned matter, and written order dated August 22, 2022, to provide the defendant with a "written explanation as to the 'other things' in Counts One and Two of the Indictment that [the Government] intend[s] to allege the defendant committed." (ECF No. 18; *see also* Tr. of August 16, 2022 Status Conf. at 9-10.)

As you are aware, Count One of the Indictment alleges mail fraud, and states that the defendant "defrauded customers of his retail eyewear website, EyeglassesDepot.com, by, among other things, misrepresenting the authenticity and condition of merchandise he sold and mailed to such customers." Count Two of the Indictment alleges wire fraud, and states that the defendant "defrauded customers of his retail eyewear website, Eyeglassesdepot.com, by, among other things, making misrepresentations via email and telephone concerning the authenticity and condition of merchandise he offered for sale and sold to customers."

With respect to Count One, the Government currently intends to allege that the defendant defrauded the customers of EyeglassesDepot.com by:

- Defrauding customers into believing that they were purchasing authentic eyewear (i.e., eyewear actually manufactured by the company that he claimed manufactured the eyewear) and instead causing counterfeit eyewear to be mailed to those customers;
- Defrauding customers into believing that they were purchasing new eyewear, and instead causing used eyewear to be mailed to them;
- Falsely representing to customers that eyewear they ordered from EyelassesDepot.com would be sourced from the company's inventory of glasses kept in stock, and instead causing eyewear to be mailed to customers, either directly or indirectly, from sellers on eBay and other third party marketplaces;
- Defrauding customers into paying for and mailing back shipping labels under the false pretenses that the customers had requested that the shipping labels be created and that EyeglassesDepot.com would be unable to recoup the cost of the shipping labels if the customers did not pay for them; and

- Falsely representing that EyeglassesDepot.com would provide requested repair services when, in fact, the services would not be provided, and causing eyewear to be mailed from and to customers who had paid for the requested repair services.

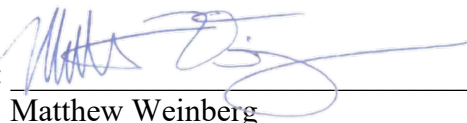
With respect to Count Two, the Government currently intends to allege that the defendant defrauded customers of Eyeglassesdepot.com by causing the following misrepresentations to be made through interstate wires:

- That the website would sell authentic eyewear, i.e., eyewear actually manufactured by the company that the defendant claimed manufactured the eyewear;
- That the website would sell new, rather than used, eyewear;
- That the website kept an inventory of eyewear, and that customers' orders would be sourced from that inventory;
- That eyewear sent to Eyeglassesdepot.com for repair services would actually be repaired;
- That Eyeglassesdepot.com had understood customers intended to request prepaid shipping labels, and that Eyeglassesdepot.com had incurred costs associated with the ordering of those shipping labels; and
- That information provided by potential customers of Eyeglassesdepot.com to Eyeglassesdepot.com (e.g. credit card information) would be used for its intended purposes, and not misused by Eyeglassesdepot.com for unrelated reasons.

The information set forth above is based on the current state of the evidence and the Government's review and analysis of the evidence to date. Certain information is based, in part, on inferences drawn from documents and other evidence in the case. As the Government continues to review and analyze the evidence, the Government reserves the right to draw other reasonable inferences from the evidence and, where appropriate, seek leave of the Court to amend the information included herein.

Very truly yours,

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United States Attorney

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